



REPORT OF THE ADJUDICATOR

Complaint reference number:	19955
WASPA member(s):	Mobile Messenger EU Ltd
Membership number(s):	1045
Complainant:	WASPA Secretariat
Type of complaint:	Non-compliance with sanctions
Date complaint was lodged:	19 March 2013
Date of the alleged offence:	16 July 2009
Relevant version of the Code:	12.1
Clauses considered:	14.3 and 14.4
Relevant version of the Ad. Rules:	n/a
Clauses considered:	n/a
Related cases considered:	6984; 7029; 7769; 7988

Complaint

The WASPA Secretariat has lodged this complaint against the SP for its failure to comply with the sanctions handed down by the adjudicator in complaint # 6984.

In complaint # 6984, the SP was found to have contravened sections 11.1.2 and 11.1.10 and the following sanctions were handed down:

- 1. The SP must pay a fine in the amount of R150 000.00;*
- 2. The SP must refund all subscribers to its "Crushometer" service;*

3. *The SP must immediately stop promoting its Flirting Tips subscription service in this manner by deactivating the link and taking down the relevant web pages.*

No appeal was lodged by the SP against the adjudicator's findings.

SP's response

The SP has failed to respond to the complaint despite the necessary reminder messages being sent to it by the WASPA Secretariat.

Sections of the Code considered

14.3.5. The member will be given five working days to respond to the complaint, and to provide any additional information the member deems relevant to the complaint, including any mitigating factors that the member wishes the adjudicator to consider.

14.3.6. If the member fails to respond within this time period, it will be assumed that the member does not wish to respond. An extension to this time period may be given to the member at the discretion of the WASPA Secretariat.

14.3.20. The member has five working days to notify the secretariat if it wishes to appeal against the decision of the adjudicator. An extension to this time period may be given to the member at the discretion of the WASPA Secretariat.

14.3.21. Unless otherwise specified in the adjudicator's report, any sanctions will be considered suspended if an appeal is lodged, until the appeal process is completed.

14.3.22. If no appeal is lodged, or if the adjudicator has specified certain sanctions as not being suspended pending an appeal, the failure of any member to comply with any sanction imposed upon it will itself amount to a breach of the Code and may result in further sanctions being imposed.

14.3.23. The member must provide the secretariat with confirmation of compliance with any applicable sanctions within five working days of receiving the adjudicator's report.

14.3.24. The member must pay any applicable fine(s) imposed by an adjudicator within five working days of receipt of invoice.

14.4.2. For all other clauses of the Code, possible sanctions that may be imposed on a member found to be in breach of the Code of Conduct are one or more of the following:

- a. a requirement for the member to remedy the breach;
- b. a formal reprimand;
- c. an appropriate fine on the member, to be collected by WASPA;
- d. suspension of the member from WASPA for a defined period;
- e. expulsion of the member from WASPA;
- f. a requirement for the member to disclose the identity of any information provider found to be acting in breach of this Code of Conduct;
- g. a requirement for the member to suspend or terminate the services of any information provider that provides a service in contravention of this Code of Conduct;
- h. a requirement to withhold a specified amount or portion of money payable by the member to the information provider.

14.4.3. When determining sanctions, the adjudicator should take note of 14.3.21, and specify any sanctions that will not be suspended if an appeal is lodged. Sanctions that can be specified in this way are limited to those that are intended to prevent future harm and include:

- a. Sanctions requiring a member to amend, suspend, or terminate a service being offered in breach of the Code of Conduct;
- b. Any sanctions imposed as a result of the failure of a member to comply with previous sanctions, as specified in 14.3.22.

14.4.4. In addition, possible sanctions against a member in breach of the Code include advising the relevant network operators or that member's aggregator to do one or more of the following:

- a. block a member's access to a specific number for a defined period;

- b. block a member's access to a specific category of service for a defined period;
- c. terminate a member's access to a specific number;
- d. terminate a member's access to a specific category of service;
- e. withhold a specified amount or portion of money payable by the network operator to that service provider;
- f. pay some or all of withheld funds to WASPA, as an appropriate fine on the service provider;
- g. issue a blanket refund to the customers of a service found to be in breach of the Code of Conduct.

14.4.7. For the avoidance of doubt, no sanction may be applied to a member who has not been given an opportunity to respond to a complaint.

Decision

1. The SP has failed to respond to this complaint despite being given the relevant five (5) working days to respond as per section 14.3.5 of the Code. It must therefore be assumed that the member does not wish to respond.
2. The sanctions handed down by the adjudicator for complaint # 6984 included the payment of a fine, the refunding of amounts received from subscribers, and an order prohibiting the SP from continuing to promote the subscription service in question in contravention of the Code.
3. The SP did not appeal against the sanctions handed down by the adjudicator.
4. In the absence of any response from the SP, I must find that the SP has failed to comply with the sanctions handed down for complaint # 6984.
5. The failure of any member to comply with any sanction imposed upon it will itself amount to a breach of the Code and may result in further sanctions being imposed.
6. I therefore find that the SP has breached section 14.3.22 of the Code.

Sanction

The sanctions handed down by the adjudicator in complaint # 6984 were viewed as appropriate in light of the seriousness of the SP's breach of the relevant sections of the Code in that complaint.

The SP's non-compliance with these sanctions must be further viewed in a serious light.

Furthermore, the SP's non-response to the current complaint must also be seen as an aggravating factor in my consideration of an appropriate sanction to be handed down now against the SP.

In light of the foregoing, the SP is suspended as a member from WASPA for a period of 6 (six) months.